

Internal Revenue Service

District Director

Department of the Treasury

P.O. Box 2500
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

EP/EO

Employer Identification Number:

Date: MAY 18 1995

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue code provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

ENCLOSURE I

Facts

Information submitted with your application indicates that your "Organizing Document" was signed by the founder, [REDACTED], on [REDACTED]. [REDACTED] signed the document under the title of "Dictator for life", the same title under which he signed the application. The document states that [REDACTED] was formed to conduct street evangelism by distributing religious tracts free of charge.

[REDACTED] was asked to amend the "Organizing Document" to include the requisite language required of an organization described under section 501(c)(3) of the Code and to expand the Board of Trustees so that the organizing document could be signed by another trustee. [REDACTED] amended the "Organizing Document" to include the requisite language but the amendment again was signed only by him.

In his response, [REDACTED] stated that [REDACTED] is a one-man organization and that he would never place control of his organization in the hands of other individuals. He stated: "As long as I am physically, mentally, and financially able to control my organization, I feel the need to dictate how the organization operates. I hope this situation will last throughout my lifetime."

The activities described above will be conducted by [REDACTED] two to three times a week. The religious tracts are bought from [REDACTED] and [REDACTED] stated that there is no relationship between [REDACTED] and [REDACTED].

Law

Section 501(c)(3) of the Internal Revenue Code provides that a corporation, community chest, fund, or foundation may qualify for exemption if it is organized and operated exclusively for purposes stated in this section.

Section 7701(a)(3) of the Code provides that the term "corporation" includes associations.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization meets requirements in this paragraph.

Section 1.501(c)(3)-1(b)(2) of the Regulations provides that the term "articles of organization" includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

Application of Law

In Morey v. Riddell, 205 F. Supp. 918 (S.D. Cal. 1962), the plaintiff's contributions to a "church" were held not to be deductible as charitable contributions because the "church" is not an organized association as contemplated by the statute. This ruling is based on, among other factors, the fact that the church has no written charter, constitution, bylaws or operational guide.

In Trippe v. Commissioner, Tax Court Memorandum Opinion, entered July 25, 1950, the petitioner was part of a group that operated a "furlough house" to provide housing and food for British soldiers and cadets on furlough. Deduction of expenses to maintain this furlough house was denied because the Court found that there was an absence of organization.

Based on the court cases cited above, a formless aggregation of individuals without some organizing instrument, governing rules, and regularly chosen officers would not be a "corporation, community chest, fund, or foundation" for purposes section 501(c)(3) of the Code. However, the typical nonprofit association formed under a constitution or bylaws, with elective officers empowered to act for it, would be treated as a corporation for purposes of section 501(c)(3) of the Code.

Since section 501(c)(3) of the Code covers only corporations, community chests, funds, and foundations, an organization described under section 501(c)(3) of the Code cannot be an individual or a partnership. Where the organizing instrument is in the form of a constitution or articles of association, there should be some evidence that it was signed by people who thereby associated themselves under its terms. Unlike a trust, an association cannot be formed by a single individual. Articles of association cannot be promulgated by the act of one individual.

[REDACTED]

In Hewitt v. Commissioner, T.C. Memo 1957-112, the petitioner took as a deduction 20 percent of his adjusted gross income as shown on his returns as contributions made to Grace Gospel Mission. The Commissioner disallowed these deductions and was sustained by the Court. The petitioner and his wife operated the Grace Gospel Mission, a mission for the purpose of preaching the Gospel. This mission was organized by the petitioner and his wife and they are the sole administrators.

The petitioner made application to the Commissioner of the Internal Revenue Service that the Grace Gospel Mission be held to be an exempt organization under section 501(c)(3) of the Code. This application was denied in a letter dated August 12, 1954, which reads in part:

".....it is our determination that the enterprise carried on by you and your wife is solely your individual activity. The law makes no provision for the exemption from Federal income tax of a religious undertaking of individuals as a personal venture where there is no form of organization. Therefore, the above-named enterprise carried on by you and your wife under the name, Grace Gospel Mission, is not entitled to exemption as a corporation, community chest, fund, or foundation, and any income derived therefrom should be included in your individual income tax returns"

Conclusion

Based on the information submitted with your application, you are operating a personal venture and do not constitute a corporation. Your organizing instrument does not constitute an acceptable "articles of organization" provided in section 1.501(c)(3)-1(b)(2) of the Regulations; therefore, you are not organized exclusively for one or more exempt purposes required in section 1.501(c)(3)-1(b)(1) of the Regulations.

Accordingly, since you do not meet the organizational test required in section 1.501(c)(3)-1(a)(1) of the Regulations and you are not a corporation, you are not exempt under section 501(c)(3) of the Code.